HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI

Writ Petition No. 17892 of 2000

Between:

M. Arunachalam

… Petitioner

And

The Chief Engineer,
Central SPDCL, Tirupati & others

… Respondents

:: O R D E R ::

Counsel for the petitioner : Shri M.P.Chandramouli

Counsel for the respondents : Shri V. Ajay Kumar

August 22, 2007

In this petition, the petitioner has prayed for quashing order dated 30-8-1999 passed by Superintending Engineer, Assessments, Tirupati (respondent No.2), whereby the consumer of electricity namely, M. Gurunadham Modaliar, grandfather of the petitioner and Proprietor of M/s. Dhanalakshmi Rice Mill, Nagari Veedhi, Papanaidupet Village, Yerpedu Mandal, Chittoor District, was held guilty of pilferage of electricity and was directed to pay a sum of Rs.1,20,239.25. The petitioner has further prayed for quashing order dated 20-7-2000, vide which Chief Engineer, Central SPDCL, Tirupati (respondent No.1) dismissed the appeal filed by him against order dated 30-8-1999.

The Facts:

Late Sri Gurunadham Modaliar established the rice mill in 1957 and obtained service connection bearing S.C. No.19210000074 from the erstwhile Andhra Pradesh State Electricity Board (for short, 'the

Board') in 1958. After creation of A.P. Transco, the consumer availed supply of electricity from it with a connected load of 18.77 KW. On 22-2-1999, the premises of the mill was inspected by Assistant Divisional Engineer, C.T. Meters, Chittoor and Assistant Engineer, C.T. Meters, Tirupati. When they entered the premises, the officers saw an unknown person running away with cutouts and some wire. They reported this incident to Assistant Divisional Engineer, DPE-I, Tirupati. The latter inspected the premises and found that incoming 'R' and 'B' phase wires were peeled off at the backside of the meter and a loop wire was inserted between the peeled off portion and outgoing side of the load cutouts. This was treated as an act of pilferage. Assistant Divisional Engineer (Operations), Renigunta provisionally estimated the loss sustained by the Corporation at Rs.3,05,515/- and served notice dated 31-5-1999 on the consumer. Respondent No.2 also issued notice dated 14-7-1999 to the consumer to show cause why the loss suffered by the Board on account of pilferage of electricity should not be estimated at Rs.3,09,048/- plus other charges and recover from him. The consumer filed Writ Petition No.11379 of 1999 against the provisional assessment. The same was disposed of on 6-6-1999 with a direction to the respondents to finalise the enquiry expeditiously and restore the supply on payment of 50% of the disputed amount.

After decision of the writ petition, the consumer filed reply dated 20-7-1999. Respondent No.2 considered the same and passed order dated 30-8-1999 whereby he held the consumer guilty of pilferage of electricity and made revised assessment of Rs.1,96,818.00. After deducting Rs.76,578.75 already deposited by the consumer, respondent No.2 asked him to pay Rs.1,20,239.25.

It appears that during the intervening period, the consumer and his son i.e. the petitioner's father died and, on that account, the petitioner started running the mill. He challenged the final assessment made by respondent No.2 by filing an appeal, which was dismissed by respondent No.1 vide his order dated 20-7-2000.

In the writ petition, the petitioner has questioned the final assessment by contending that the same is vitiated due to violation of the rules of natural justice and that the finding of pilferage of electricity recorded by respondent Nos.2 and 1 is perverse. In the affidavit filed by him, the petitioner has averred that the remark recorded by the inspecting team that two wires had been peeled off is based on the imagination of the officers because the meter is installed at a height of 8 feet and it was impossible for them to see the peeled off wires at the back of the meter box. He has further averred that the story of pilferage of electricity has been concocted in order to frame up the consumer and the assessment made without taking into consideration the previous consumption is legally unsustainable. In paragraph 6 of his affidavit, the petitioner has averred as under:

> "The Superintending Engineer also failed to see that the case projected by the Asst. Divisional Engineer is false on the face of it inasmuch as he has not given at least the description of the person who has run away taking the wire with him. It is also pertinent to note that he has not given any explanation as to how the said person removed the wires which were at 8 feet high and ran away from the only door through which the inspection party was entering into the mill. The Superintending Engineer also failed to see that the Asst. Divisional Engineer has failed to take any signature from the petitioner's mother in proof of showing the peeled off wires to her. Yet another important circumstance in this case is that no mention is made about the owner of the paddy whose paddy was being milled. All these circumstances would positively prove that the case is false and fabricated. Further, the Superintending Engineer has not given any reason as to why the units were charged with different rates. It is also relevant to submit that it was the Asst. Engineer who takes the reading every month and not any low paid employee."

In the counter filed by Sri D. Venkata Chalapathy, Assistant Divisional Engineer (Operation), Renigunta, it has been averred that the final assessment was made by respondent No.2 after considering various points raised in the explanation dated 14-7-1999 submitted by the consumer and the finding of pilferage of electricity is based on correct appreciation of facts discovered during the inspection

of the premises by the officers.

Sri M.P. Chandramouli, learned counsel for the petitioner argued that the theory of pilferage of electricity by the consumer should be discarded because the two officers, who are said to have inspected the site, did not make any attempt to catch the unknown person, who is said to have ran away with the cutouts, and they did not assign any reason for not preparing panchanama and obtaining the signature of the consumer or his representative. He further argued that the provisional and final assessment of the alleged loss caused to the licensee is liable to be rejected because the same is based on surmises and conjectures. Sri Chandramouli relied on judgment dated 31-1-2005 rendered by VI Additional District & Sessions Judge, Tirupati in Criminal Appeal No.340 of 2003 to show that the petitioner was acquitted of the offence alleged under Section 44 of the Indian Electricity Act, 1910 and argued that in the face of the finding recorded by the court of competent jurisdiction, the orders passed by respondent No.2 and 1 are liable to be set aside.

Sri V. Ajay Kumar, learned counsel for the respondents argued that the finding on the issue of pilferage of electricity is based on the status of the meter and wires found by the inspection team and there is no valid reason to discard the report submitted by the officers because the petitioner has neither alleged mala fides against them nor produced any evidence to show that they had acted with an ulterior motive. Learned counsel referred to paragraph 39 of the Andhra Pradesh Electricity Board Terms and Conditions of Supply and argued that the provisional assessment was issued by respondent No.2 because, after going through the report of the inspection team, he felt convinced that the consumer had indulged in pilferage of electricity. Learned counsel further argued that the consumer who is found guilty of pilferage of electricity is not entitled to relief under Article 226 of the Constitution of India.

I have given my anxious consideration to the respective

submissions and scrutinised the record. The power of judicial review vested in the High Courts under Article 226 of the Constitution of India can be exercised in such matters only if it is shown that the adjudication made by the quasi-judicial authority suffers from any jurisdictional infirmity or is vitiated due to violation of the rules of natural justice or the findings recorded by the concerned authority are vitiated by an error of law apparent on the face of the record. The High Court can scrutinise the matter to satisfy itself that the decision-making process is not tainted by arbitrariness, mala fides or violation of the rules of natural justice, but cannot sit in appeal over the actual decision except when it is shown to be perverse.

A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals or quasi-judicial authorities. A writ can also be issued where, in exercise of jurisdiction conferred on it, the Court or the Tribunal or quasi-judicial authority acts illegally or improperly, i.e., it decides a question without giving an opportunity of hearing to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is supervisory in nature and not appellate one. This necessarily means that the finding of fact reached by the inferior Court, Tribunal etc., as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. An error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or quasi-judicial authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal or quasi-judicial

authority can be corrected only if it is shown that in recording the said finding, the Court etc., had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as error of law which can be corrected by issuing a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court of Tribunal or quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari.

In **Syed Yakoob v. K.S. Radhakrishnan**[1], the Supreme Court considered the scope of the High Courts' power to issue a writ of certiorari and laid down the following propositions:

> "i) A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.
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> ii) The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law

which can be corrected by a writ of certiorari.

iii) A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court."

The proposition laid down in **Sayed Yakoob[1] (supra)** has been reiterated in a recent judgment in **Mohd. Shahnawaz Akhtar & Anr. v. Ist ADJ Varanasi & ors.**[2].

In **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[3], their Lordships of the Supreme Court, while dealing with the scope of High Court's power under Article 226 to re-appreciate the evidence produced before the trial Judge, held as under:

> "Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. When the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

In **R.S. Saini v. State of Punjab and others**[4], the Supreme Court upheld the order passed by the High Court dismissing the writ petition filed against the order of the petitioner's removal from the office of the President of Municipal Committee. Some of the observations made in that decision, which are worth noticing read as under:

> "The court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the

finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

In **Surya Dev Rai v. Ram Chander Rai**[5], the Supreme Court noted the history of the development of High Court's jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

"i) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

ii) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

iii) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances

of the case.

iv) The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge."

In the light of the above stated legal position, it is to be seen whether the orders passed by respondent Nos.2 and 1 are vitiated due to any jurisdictional infirmity or violation of the rules of natural justice or there is an error of law apparent on the face of the record. It is neither the pleaded case of the petitioner nor the learned counsel appearing on his behalf argued that respondent No.2 did not have the jurisdiction to assess the loss caused due to the alleged pilferage of electricity by the consumer and create additional demand. Therefore, the impugned orders cannot be quashed on the ground of lack of jurisdiction.

The next question which needs consideration by the Court is whether the impugned orders are vitiated due to violation of the rules of natural justice. There cannot be any doubt that while assessing the loss caused on account of the alleged pilferage of electricity by the consumer, respondent No.2 was acting as a quasi judicial authority and was performing a quasi-judicial function. Likewise, while deciding an appeal preferred against the order of assessment, respondent No.1 was acting as a quasi-judicial authority.

In the context of the petitioner's plea of violation of the rules of

natural justice, it is apposite to notice paragraphs 39.1, 39.1.7, 39.2, 39.5, 39.6, 39.7, 39.7.4.1, 39.7.4.2 and 39.7.4.3 of the conditions of supply, which contain the procedure to be followed in the case of malpractices including pilferage of energy. The same read as under:

"**39.1 Malpractice:-** The expression "malpractice" shall include any violation of law or the terms and conditions of supply framed under Section 49 of the Electricity Supply Act, 1948 including pilferage in particular the following:

39.1.7 Pilferage:- Pilfering energy with or without the aid of any device including the consumption of energy which is not metered and conduct, preventing the correct recording by the meter of the consumption of electricity.

39.2 Access to the premises:- Officer(s) of the Board, authorized in this behalf may at any time, enter upon the consumer's premises and check the installations, where there is scope for suspecting that the consumer is guilty of any malpractice in respect of use of electrical energy or is using devices to commit the pilferage of electrical energy.

39.5 Where on the inspection of consumer's installations of premises or on the basis of other information or data there is scope for suspecting that a consumer is guilty of supply of electricity to any service, which is disconnected by the Board or 'pilferage of energy', the officer authorized in this behalf by the Board may without prejudice to Board's other rights, cause the supply of electricity to such consumer to be forthwith disconnected without any notice and report the matter to the final assessing authority. In the case of the malpractices other than the one mentioned above, supply shall be disconnected only in the event of failure on the part of the consumer to pay half of the estimated amount within the period stipulated in the provisional assessment notice.

39.6 Provisional assessment of the loss sustained by the Board and payment:

The inspecting officer shall make a provisional estimate of the loss incurred by the Board by the reason of the malpractice or pilferage of energy committed by the consumer which shall be assessed as mentioned hereinbelow and intimated to the Assistant Divisional Engineer concerned. The A.D.E. concerned shall ensure disconnection of such services forthwith in the case of malpractices with reference to supply of electricity to any disconnected service or pilferage of energy. The Assistant Divisional Engineer shall then serve the consumer with a notice of provisional assessment in the prescribed form. Such notice shall mention, inter alia.

(a) the matters noticed during the inspection of the consumer's premises and installations.

(b) the reasons for disconnection already effected or proposed to be effected and

(c) a provisional estimate of the loss sustained by the Board computed in the prescribed manner.

He shall inform the consumer to pay half of the provisionally assessed amount, pending the inquiry to be conducted by the concerned authority into the case, to secure restoration of supply where supply has been disconnected or to avoid discontinuance of supply where disconnection has not been effected. If such payment is made the consumer's service shall not be disconnected on this ground pending the enquiry.

39.7 Provisional Assessments:- Provisional assessment of the loss sustained by the Board referred to in clause 39.6 above shall be made on the principles set out below:

39.7.1 In the case of the malpractice of supply of electricity to any service which is disconnected or illegal restoration of supply to the consumer's own disconnected premises where the electricity consumed is metered the entire consumption during the estimated period of malpractice shall be charged at the special rates as prescribed in clause 39.12.1 hereunder:

39.7.2 In the case of malpractices other than that mentioned in sub-clause 39.7.1 above, the quantity of electricity shall be assessed as under:

Where – (a) denotes total consumption recorded during the month.

(b) denotes total connected load at the time of inspection.

(c) denotes unauthorised connected load at the time of inspection.

(1) xxxxxx

(2) (i) Unauthorised extension of service where the contracted load is less than the connected load (including that of the unauthorised extension). $\frac{A \times (b - \text{connected load})}{b}$

(ii) Unauthorised extension of service where the connected load (including that of the unauthorised extension is less than the contracted load). $\frac{a \times c}{b}$

(3) Non-compliance with peak load restrictions in the month $\frac{a \times \text{peak load hours in month}}{\text{Total hours in the month}}$

(4) Use of electricity for other than the sanctioned purposes (except when the contracted power tariff is higher and the consumer uses the supply for a purpose for which the tariff is lower or the tariff is the same. $\frac{a \times c \text{ load utilised for other purposes}}{b}$

(5) Release of energy: $\frac{a \times \text{load of the service to which electricity is sold by the consumer}}{b}$

Assessment in the aforesaid cases shall be made for the estimated period of malpractice subject to a maximum period of one year prior to the date of inspection and the quantity of electricity so arrived at shall be charged at the special rate as prescribed in Clause 39.12.1 hereunder:

39.7.4 Cases of pilferage of energy of consumers of L.T. electricity.

39.7.4.1 Quantity of units consumed per month shall be worked out as under:

Connected load found at the time of inspection in KW x Diversity Factor x Load Factor x number of working hours per day x number of days in the month.

39.7.4.2 Diversity Factor, Load Factor, number of hours and number of days to compute the quantity of units as mentioned in sub-clause 39.7.4.1 shall be taken as mentioned below:

Category	Diversity Factor	Load Factor	Number of working hours per day	Number of days per month
1. Domestic	50%	40%	24	30
2. Non-domestic and commercial	90%	90%	12 to 18 hours depending upon the nature of use.	25 or 30 days as the case may be
3. Industrial including cottage	Unity	80%	8,16,24 depending on number of shifts	25 or 30 as the case may be
4.Agricultural	Unity	100%	10	30
5.Public Lighting			8	30

39.7.4.3 The assessment shall be made for entire period during which pilferage is taking place and can be clearly established. If there is any ambiguity the period should be limited to a maximum of one year prior to the date of inspection. The consumption so assessed shall be charged at the special rates as prescribed in Cl.39.12.1 hereunder."

Reverting to the facts of this case, I find that at the time of inspection of the consumer's premises on 22-2-1999, the two officers found that cutouts had been removed and loop was inserted for obtaining supply of electricity to the mill. Assistant Divisional Engineer, DPE-I, Tirupati, who inspected the service connection also found that the cutouts were removed, the incoming 'R' and 'B' phase wires were peeled off at the backside of the meter and that the

consumer was drawing energy by inserting loop between the peeled off portion and the outgoing side of the load cutouts. The consumer was given notice to explain his position. In the reply filed on 20-7-1999, the consumer neither disputed the factum of inspection nor he made any allegation of mala fides against the members of the inspection team or Assistant Divisional Engineer, DPE-I, Tirupati. Rather, he expressed ignorance about peeling off the insulation and claimed that he had not connected the loop wire for obtaining supply. It is, thus, clear that the officers had followed the procedure prescribed under paragraphs 39.2 and 39.5 of the conditions of supply laid down by the Board and the complaint of violation of the rules of natural justice made by the petitioner is untenable.

The argument of Sri Chandramouli that the impugned orders should be quashed because the officers did not obtain signatures of the representative of the petitioner or that they did not prepare panchanama merits rejection because the petitioner's cause is not shown to have been prejudiced on that account. If the consumer so wanted, he could have asked for the report of the inspection team or Assistant Divisional Engineer, DPE-I, Tirupati and even made a request for their cross-examination. However, the fact of the matter is that he did not make any such request. Therefore, at this belated stage, he cannot be heard to complain of denial of effective opportunity of hearing.

I am further of the view that the reports prepared by three officers of the A.P. TRANSCO, who are not shown to have any malice against the consumer, were sufficient for recording a finding that there was pilferage of energy. The consumer could have produced evidence to controvert the facts relating to peeling off the wire and supply of energy through loop wire, but he did not make any such attempt. Respondent No.2 considered the various objections raised by the consumer and recorded a well reasoned finding regarding pilferage of energy. This is evinced from the following extracts of order

dated 30-8-1999.

"While entering into the premises for testing the meter, the Asst. Divil. Engineer/CT.Meter/Chittoor along with Asst.Engineer/CT.Meter, Tirupati has noticed that the meter was running. On seeing them an unknown person removed cutouts and loops provided and ran away along with wires used for by-passing the meter. Immediately, the Asst.Divil.Engineer/C.T. Meter/Chittoor has informed to Asst.Divil.Engineer/DPE.I/Tirupati for detailed examination.

The Asst. Divisional Engineer/DPE.I/Tirupati has inspected the service and cutouts are found lifted in two phases and also found that the incoming 'R'& 'B' phase wires are peeled off at the back side of the meter which is not visible from the front side of the meter. The consumer thus thieving energy by providing a loop wire in between peeled off portion and outgoing side of the load cutouts.

The peeled off portion of the incoming wires were cut from the incoming cable about 10" in 'R' phase and 8" in 'B' phase and preserved. The observations were shown to Smt. M.Govindamma, daughter-in-law of consumer. Thus, the case is established.

The consumer cannot absolve his responsibility by saying that he is unaware of it since the matter is in the custody of consumer.

The consumer is using supply by by-passing the meter in 'R' and 'B' phase only. There will be 'Y' phase consumption in meter. Hence, the consumer's contention that if he actually by-passed the meter, the meter would have not recorded any consumption is not admitted. The provisional assessment was made as per the terms and conditions of supply. Hence, the contention of consumer that using of supply at 8 hrs/day is not justified is not accepted.

In the absence of valid record in support of his contention, they are also not admitted.

As per the incriminating points, the consumer is utilizing supply by by-passing the meter in two phases i.e. 'R' & 'B' by connecting a loop wire from peeled off portion so if incoming phase wires of 'R' & 'B' phase and outgoing side of load cutouts. In this position, the consumption will not be recorded in 'R' and 'B' phase. The consumption to be recorded in other two phase is arrived at.

Having regard to the facts and circumstances of the case, the undersigned is convinced that the consumer has committed pilferage in use of energy and is liable to compensate the loss sustained by the Board."

Respondent No.2 also made final assessment by applying the criteria specified in paragraph 39 of the terms and conditions of supply. This is borne out from the following portion of order dated 30-8-1999:

"The other point for consideration is the quantum of assessment.

The undersigned finds reason to revise the assessment contained in the show cause notice and hence the same is revised as below:

REVISED ASSESSMENT

Recorded consumption in 'Y' phase in one year : 8315 + 2314
To be recorded consumption if not by-passed : (8315x2134)x3
in two phase. = 24945 + 6402

Difference : (24945 – 8315) + 6402 – 2134) = 16630 + 4268

Value of energy pilfered in two phases: 16630x9+4268x11=149670+46948 = 1,96,618.00

Amounts to be paid by the consumer

a) Energy charges : Rs. 1,96,618-00
b) Supervision charges : Rs. 150-00
c) R.C. Charges : Rs. 50-00

Total : Rs. 1,96,818-00

Less the amount already paid : Rs. 76,578-75

Total : Rs. 1,20,239-25

Respondent No.1 independently considered the points raised by the petitioner in the memorandum of appeal and held:

"……..On detailed examination of meter box seals, one TC seal opened. The wooden P.P. box was fixed about 8 feet on the surface of the wall. The incoming R&B phases are peeled off at the back side of the meter, which is not visible from the front side of the meter. From the above, it clearly establishes that the consumer is thieving energy by providing a loop wire in between peeled off portion to outgoing side of the load cutouts.

2. The Asst.Divl.Engineer/Operation/Renigunta vide his Lr. dt.7-4-2000 has reported that the service was under DC only from 8-2-1999 to 13-2-1999 and during the other periods the service was not under DC. The service was not actually disconnected by the field officers.

3. As there is clear proof of evidence that the consumer indulged in theft of energy, it is not accepted unless it is proved that the consumer has taken up alteration works.

4. Peeling off wire is due to aging of service wire is not acceptable. The inspecting officer clearly reported that R&B phase wires are peeled off at the back side of the meter about 1 inch length.

The peeled off portion of the incoming wires were cut from the incoming cable about 10" in R phase and 8" in B phase and preserved. The observations were shown to Smt. M. Govindamma, daughter-in-law of the

consumer. Thus, the case is established.

Having regard to the facts and circumstances of the case, the undersigned is convinced that the appellant had committed theft in use of energy and is liable to compensate the loss sustained by the company.

The other point for consideration is the quantum of assessment. The undersigned finds no reason to revise the assessment contained in the FAO order and hence, the same is hereby confirmed as detailed below:

Energy charges : Rs.1,96,618-00
Supervision Charges : Rs. 150-00
Reconnection charges : Rs. 50-00"

The above extracted portions of the impugned orders show that the concurrent finding recorded by respondent Nos.2 and 1 on the issue of pilferage of energy by the consumer is based on a correct appreciation of facts brought on record. Therefore, in exercise of the power under Article 226 of the Constitution of India, this Court cannot sit in appeal and review such finding more so because the learned counsel for the petitioner failed to show that while holding the consumer guilty of pilferage of energy, respondent No.2 considered any irrelevant factor or ignored relevant and legally admissible evidence.

The assessment made by respondent No.2 is not shown to be contrary to paragraphs 39.7.4.1, 39.7.4.2 and 39.7.4.3. Therefore, I do not find any valid ground or justification to interfere with the demand created by respondent No.2, which was confirmed by respondent No.1.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, interim order dated 22-9-2000 is vacated and WPMP.No.22742 of 2000 is dismissed.

G.S. SINGHVI, CJ

August 22, 2007

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[1] AIR 1964 SC 477

[2] JT 2002 (8) SC 69 = (2002) 9 SCC 375

[3] AIR 1970 SC 61

[4] JT 1999 (6) SC 507 = (1999) 8 SCC 90

[5] AIR 2003 SC 3044